RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA

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13 December 2018 Our ref: Raj Daya/MCele/SCA Your ref:

Dear Sir/Madam,

PROPOSED AMENDMENTS TO SUPREME COURT OF APPEAL RULES 11; 13 AND 17

The Rules Board for Courts of Law is currently in the process of reviewing the rules of the Supreme Court of Appeal to *inter alia* align those rules with the Superior Courts Act, 2013 (Act No. 10 of 2013), other relevant legislation and current terminology.

The Rules Board intends to incrementally submit proposed amendments to the Supreme Court of Appeal Rules for comment and input and currently submits the following draft amended rules for consideration:

(a) SCA Rule 11 (Power of the President or the Court);
(b) SCA Rule 13 (Set down); and
(c) SCA Rule 17 (Taxation of costs).

Regarding SCA Rule 11, the *Latin* terminology in the rule is proposed to be amended to the English equivalent.

Regarding SCA Rule 13, the main amendment proposed to the rule is intended to give notification of the date of hearing of the case by electronic means, as contemplated by Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

You are also requested to comment on the effect on the rule of the deeming provision in Chapter III, Part 2 of ECTA, 2002.

Regarding SCA Rule 17, the amendments proposed to the rule are:

(a) To amend outdated and gender insensitive terminology; and
(b) To amend *Latin* terminology to the English equivalent.

Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985
Justice N Dambuza(Chairperson)| Justice FE Mokgohloa(Vice-Chairperson)| Mr.M Kutama | Adv.L Haupt SC | Mr.A Essa | Ms.J Wessels
Mr.P Hundermark | Ms.N Ndlovu | Mr.R Isaacs | Mr.T Seboka | Adv.M Sishuba | Prof.E Hurter | Adv.M Basdew | Mr.G Bellairs | Mr.T Thupaatlase

As part of its consultative process in rule making and amendment, the Rules Board invites your comments on:

(a) Draft amended SCA Rule 11, attached as "Annexure RB 1";
(b) Draft amended SCA Rule 13, attached as "Annexure RB 2"; and
(c) Draft amended SCA Rule 17, attached as "Annexure RB 3"

Your comments and input may be delivered to the Rules Board or may be emailed to JBalkishun@justice.gov.za and must reach the Rules Board on or before Friday,15 March 2019.

The Rules Board looks forward to receiving your input and thanks you for same.

Yours sincerely,

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ANNEXURE RB 1

RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA

DRAFT AMENDED S C A RULE 11

11 Powers of the President or the Court

Powers

(1) The President or the Court may [***mero motu***] of own accord, on request or an application—

(a) extend or reduce any time period prescribed in these rules and may condone non-compliance with these rules;

(b) give such directions in matters of practice, procedure and the disposal of any appeal, application or interlocutory matter as the President or the Court may consider just and expedient.

Delegation

(2) Any power or authority vesting in the President in terms of these rules may be exercised by a judge or judges designated by the President for that purpose.

ANNEXURE RB 2

RULES BOARD FOR COURTS OF LAW
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DRAFT AMENDED S C A RULE 13

13 Set down

Notification

(1) **The registrar shall, subject to the directions of the President, notify each party [by registered letter]** electronically of the date of hearing: Provided that where electronic notification is not possible the registrar shall notify the party concerned, by registered letter.

Address

(2) *(a)* Where notification in terms of subrule (1) is given electronically, the provisions of Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) shall apply.

(b) A registered letter forwarded to a party's last-known address shall be deemed to be sufficient notice of the date of the hearing.

Non-appearance

(3) If the applicant or appellant fails to appear at the date thus notified, the application or appeal shall be dismissed for non-prosecution, unless the Court otherwise directs.

Unavailability of counsel

(4) Where a pending appeal is awaiting enrolment the registrar must be informed immediately—

(a) if counsel for either party is due to be unavailable in the next ensuing term; and

(b) if enrolment may clash with religious holidays which any of the legal representatives or parties in the case wish to observe.

RULES BOARD FOR COURTS OF LAW
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DRAFT AMENDED S C A RULE 17

17 Taxation of costs

Taxation

(1) The costs incurred in any appeal or application shall be taxed by the registrar who, when exercising this function, shall be called the taxing master, but **[his or her]** the taxation shall be subject to review in terms of subrule (3).

VAT

(2) Value-added tax may be added to all costs, fees, disbursements and tariffs in respect of which value-added tax is chargeable.

Statement of case

(3) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed **[*mero motu*]** of own accord by the taxing master may within 20 days of the **[*allocatur*]** amount taxed and allowed require the taxing master to state a case for the decision of the President, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation, and shall embody any relevant findings of facts by the taxing master.

Contentions of parties

(4) The taxing master shall supply a copy of the stated case to each of the parties, who may within 15 days of receipt of the copy submit contentions in writing thereon, including grounds of objection not advanced at the taxation, in respect of any item or part of an item which was objected to before the taxing master or disallowed **[*mero motu*]** of own accord by the taxing master.

Report

(5) Thereafter the taxing master shall frame **[his or her]** a report and shall supply a copy thereof to each of the parties and shall forthwith lay the case, together with the contentions of the parties thereon and **[his or her]** such report, before the President.

Hearing of review

(6) *(a)* The President or a judge or judges designated by **[him or her]** the President may—

(i) decide the matter upon the merits of the case and submissions so submitted;

(ii) require any further information from the taxing master;

(iii) if deemed fit, hear the parties or their advocates or attorneys in chambers; or

(iv) refer the case for decision to the Court.

(b) Any further information to be supplied by the taxing master to the judge or judges must also be supplied to the parties who may within 10 days after receipt thereof, make written submissions thereon to the taxing master, who shall forthwith lay such information together with any submissions of the parties thereon before the judge or judges.

(7) The judge, judges or court deciding the matter may make such order as to costs of the case as deemed fit, including an order that the unsuccessful party pay to the successful party the costs of review in a sum fixed by the judge, judges or the Court.